

The Hon. John C. Coughenour

UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

UNITED STATES OF AMERICA,

Plaintiff,

v.

VLADIMIR Y. KOZUB,

Defendant,

And,

HARRY F. BORER,

Third-Party Claimant.

No. CR21-033-JCC

**STIPULATION AND ~~[PROPOSED]~~
ORDER SETTLING THIRD-PARTY
CLAIM TO FIREARM**

NOTED FOR CONSIDERATION:

February ~~25~~ 16, 2022

The United States and Third-Party Claimant Harry F. Borer present the following stipulation and proposed order to settle the interest Mr. Borer has asserted in the .45 caliber Colt pistol (Serial Number CJ12733) that was forfeited by the Defendant in this case.

I. RELEVANT PROCEDURAL FACTS

The Defendant in this case agreed to forfeit the above-identified pistol pursuant to the plea he entered on August 12, 2021 (Dkt. No. 26). Prior to the Defendant's sentencing, the Court entered a Preliminary Order of Forfeiture forfeiting the Defendant's interest in this pistol (Dkt. No. 31). Thereafter, as required by 21 U.S.C. § 853(n)(1) and

1 Fed. R. Crim. P. 32.2(b)(6)(C), the United States published notice of the Preliminary
 2 Order of Forfeiture and the government's intent to dispose of the pistol in accordance
 3 with governing law. Dkt. No. 36. That notice informed any third parties claiming an
 4 interest in the pistol that they were required to file a petition with the Court within 60
 5 days of the notice's first publication on October 19, 2021. *Id.* As required by Fed. R.
 6 Crim. P. 32.2(b)(6)(A), the United States also sent notice and a copy of the Preliminary
 7 Order to Mr. Borer, as he appeared to be a potential claimant based on the underlying
 8 investigative material.

9 Mr. Borer submitted a timely claim to the pistol on February 7, 2022, which was
 10 filed on the docket on February 11, 2022. Dkt. No. 41. In his claim, Mr. Borer asserts
 11 that he is the rightful owner of the pistol. *Id.* No competing claims to the pistol have
 12 been filed, and the period for doing so is to expire on February 23, 2021.

13 II. STIPULATION

14 The United States and Mr. Borer HEREBY STIPULATE to the following facts:

15 1. In support of his claim, Mr. Borer asserts he purchased the pistol from Big
 16 "R" in Billings, Montana on May 29, 1996. In support of his claim, Mr. Borer provided a
 17 copy of the original purchase receipt.

18 2. The information provided by Mr. Borer is consistent with information
 19 contained on the firearms trace report for the pistol prepared by the United States
 20 Department of Justice, Bureau of Alcohol, Tobacco, Firearms and Explosives ("ATF").
 21 The firearms trace report confirms Mr. Borer was the last individual to purchase the
 22 pistol from a Federal Firearms Licensee ("FFL") and further confirms that the FFL was
 23 Shiptons Big R, in Billings, Montana.

24 3. United States Department of Justice, Drug Enforcement Administration
 25 ("DEA"), has confirmed that Mr. Borer has no identifiable criminal history that would
 26 preclude him from possessing a firearm at this time.

27 4. Mr. Borer affirms that neither he nor any person living in his residence is
 28 prohibited from possessing a firearm.

1 5. Based on the information and affirmations reflected in Paragraphs 1–4, the
2 United States agrees that Mr. Borer had a vested interest in the pistol, pursuant to 21
3 U.S.C. § 853(n)(6)(A), before the defendant in this case possessed it.

4 6. The United States recognizes Mr. Borer’s vested interest in the pistol and
5 agrees the government will return the firearm to Mr. Borer following the criminal
6 proceedings in this case, to include any criminal appeal. The seizing agency, DEA, will
7 effect the return of the pistol to Mr. Borer.

8 7. Mr. Borer understands the pistol constitutes evidence in this case and
9 cannot be returned prior to the completion of these criminal proceedings, to include any
10 criminal appeal.

11 8. Mr. Borer understands and agrees the pistol will be returned to him in its
12 current condition, as it was seized from the defendant in this case.

13 9. Mr. Borer understands and agrees that this Stipulation fully and finally
14 resolves his claim to the pistol. Mr. Borer waives any right to further litigate or pursue
15 his claim, in this or any other proceeding, judicial or administrative.

16 10. Upon return of the pistol, Mr. Borer agrees to release and hold harmless the
17 United States, its agents, representatives, and/or employees, as well as any involved state
18 or local law enforcement agencies, their agents, representatives, and/or employees, from
19 any and all claims Mr. Borer may possess, or that could arise, based on the seizure,
20 detention, and return of the firearm.

21 11. The United States and Mr. Borer agree they will each bear their own costs
22 and attorneys’ fees associated with the seizure, detention, and return of the pistol, as well
23 as with Mr. Borer’s claim and this Stipulation.

24 12. The United States and Mr. Borer agree the terms of this Stipulation are
25 subject to review and approval by the Court, as provided in the proposed Order below. If
26 the Court enters the proposed Order, a violation of any term or condition of this
27 Stipulation shall be construed to be a violation of that Order.
28

Respectfully submitted,
NICHOLAS W. BROWN
United States Attorney

DATED: February 16, 2022

s/Krista K. Bush
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DATED: February 16, 2022

s/Harry F. Borer
HARRY F. BORER
Third-Party Claimant
31920 Riverview Dr.
Parker, AZ 85344
(619) 994-3295
mhborer@gmail.com

[PROPOSED] ORDER

The Court has reviewed the above Stipulation between the United States and Third-Party Claimant Harry F. Borer, which settles the interest Mr. Borer has asserted in the 45 caliber Colt pistol (Serial Number CJ12733), Dkt. No. 41, which has already been forfeited by the defendant in this case, Dkt. No. 31. The Court HEREBY APPROVES the Stipulation and its terms.

IT IS SO ORDERED.

DATED this 17th day of February 2022.

A handwritten signature in black ink, reading "John C. Coughenour", written over a horizontal line.

John C. Coughenour
UNITED STATES DISTRICT JUDGE

CERTIFICATE OF SERVICE

I hereby certify that on February 16, 2022, I electronically filed the foregoing Stipulation and [Proposed] Order with the Clerk of the Court using CM/ECF system, which automatically serves the parties of record. On this same date, I also served a copy on Third-Party Claimant Harry F. Borer via U.S. mail and electronic mail to:

HARRY F. BORER
Third-Party Claimant
31920 Riverview Dr.
Parker, AZ 85344
mhborer@gmail.com

s/Hannah G. Williams
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